

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-548-GCM
(3:96-cr-123-GCM-1)**

MICHAEL EDWARD JONES,)	
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
<hr/>)	

THIS MATTER is before the Court on Petitioner's *pro se* Motion for Relief from Judgment, (Doc. No. 5), in which he seeks relief from the Court's Order denying his Motion to Vacate Under 28 U.S.C. § 2255 pursuant to Rules 12, 15(d) 60(b)(1) and (6) of the Federal Rules of Civil Procedure.

Petitioner was convicted in the underlying criminal case of: Count (1), conspiracy to possess with intent to distribute, and the distribution of cocaine base; Count (2), possession of a firearm during and in relation to a drug trafficking crime and aiding and abetting the same; Count (3), possession with intent to distribute cocaine based and aiding and abetting the same; and Count (7), possession of a firearm by a felon. (3:96-cr-123, Doc. No. 132). Petitioner was sentenced as a career offender to life imprisonment for Count (1), 480 months for Count (3), 120 months for Count (7), and a mandatory consecutive five-year term for Count (2). (*Id.*, Doc. No. 162). The Fourth Circuit affirmed on appeal, United States v. Mitchell, 131 F.3d 137 (4th Cir. 1997), and the United States Supreme Court denied certiorari, 523 U.S. 1049 (1998).

Petitioner filed a § 2255 Motion to Vacate, case number 3:01-cv-378, that was dismissed

as untimely. Petitioner did not appeal.

In July 2016, Petitioner requested authorization from the Fourth Circuit to file a second or successive § 2255 petition based on Johnson v. United States, 135 S.Ct. 2551 (2015), which was granted. (Doc. No. 1-1). On September 19, 2016, the Court dismissed the § 2255 Motion to Vacate with prejudice as untimely and, alternatively, as meritless because Petitioner's career offender designation did not affect his guidelines range. (Doc. No. 3). The Fourth Circuit denied a certificate of appealability and dismissed Petitioner's appeal. United States v. Jones, 685 Fed. Appx. 294 (4th Cir. 2017).

Presently pending before the Court is Petitioner's *pro se* Motion for Relief from Judgment. Petitioner argues that the Court should vacate, withdraw, or strike its September 19 Order because it incorrectly found the § 2255 Motion to Vacate to be untimely without consideration of the prisoner mailbox rule. Petitioner further seeks reconsideration in light of Beckles v. United States, 15-8544.

Petitioner's Motion for Relief from Judgment will be denied. Assuming *arguendo* that the Court incorrectly calculated the timeliness of the § 2255 Motion to Vacate, such does not warrant reconsideration because the Court alternatively denied relief on the merits. Moreover, Petitioner's reliance on Beckles is unavailing because the Supreme Court determined that Johnson does not apply to the advisory guidelines. 136 S.Ct. 2510 (2017). There is no theory under which Petitioner can demonstrate entitlement to relief, and therefore, his Motion will be denied.

IT IS, THEREFORE, ORDERED that Petitioner's *pro se* Motion for Relief from Judgment, (Doc. No. 5), is **DENIED**.

Signed: October 21, 2019

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

